IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.MC.No. 627 of 2002()

S.T.CASE NO.497/1999 OF JFCM, MALAPPURAM

PETITIONER: ACCUSED 1 AND 2

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1. D.SIVAKUMAR, FORMER BRANCH MANAGER, BROOKE BOND INDIA LIPTON LIMITED, MADRAS BRANCH, MYLAPORE, MADRAS.

2. M/S. BROOKE BOND LIPTON (INDIA) LIMITED, SHAKESPARE SARANI, CALCUTTA (SINCE AMALGAMATED WITH HINDUSTAN LEVEL LIMITED) REPRESENTED BY D.SIVAKUMAR.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENTS: COMPLAINANT & STATE

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1. THE FOOD INSPECTOR, TIRUR CIRCLE, MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.423/2002 IN CRL.M.C.NO.627/2002

CLOSED.

SD/- K.R.UDAYABHANU, JUDGE

04/10/2007

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K.R.UDAYABHANU, J.

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Crl.M.C.No.627 of 2002-C

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Dated this the 4th day of October, 2007

O R D E R

The petitioners are the nominee and the manufacturer, who are arrayed as accused Nos.1 and 2 in S.T.No.497/1999 which is the split up case from S.T.No.2339/1996 wherein the petitioners were A3 and A4.

2. It is submitted that the petitioners were prosecuted alleging that they are manufacturers of the food article, i.e, skimmed milk powder that was purchased by the Food Inspector from the vendor, i.e, A1, of the shop in which A2 was the licencee, in S.T.No.2339/1996. A5 was subsequently impleaded in S.T.No. 2339/1996 at the instance of A1 and A2 under Section 20A of the Prevention of Food Adulteration Act. As per the judgment of the trial court dated 06/04/2001, A1 and A2 therein were acquitted on the basis of the protection under Section 19(2) P.F.A Act in view of the fact that they have proved that they have purchased the above article from A5 vide bill produced. During the pendency of the proceedings A5 died and the proceedings against him abated. The petitioners herein have also produced the copy of the complaint

wherein the documents produced are specified. It is pointed out that there are no documents attached to the complaint that can implicate the petitioners herein. It is pointed out that vide proviso to Section 14 P.F.A Act, only bill, cash memorandum or invoice in respect of the sale of any article of food given by manufacturer can constitute warranty or evidence as to the sale by the manufacturer. The counsel has relied on the decision reported in **G.Lakshmanan and another v. State [1998 (2) P.F.A Cases 23]** wherein the court has rejected the contention that the fact that Form No.6 and notice under Section 13(2) was served upon the petitioners/manufacturers is sufficient. It was specifically held that in the absence of material in the form of a statement from the dealer, or purchase bill under Section 14A of the Act, the Food Inspector cannot come to a conclusion that the company alone is the manufacturer. The Supreme Court in **Murlidhar Shyamlal and Another v. State of Assam [1996 SCC (Cri) 485]** has held that the label alone is not sufficient to implicate the manufacturer and that it must be specifically held therein that the article of food sold was of the same nature and quality which it purports to be in the label. It was also held that the evidence given by the witness in

the witness box that the article was of the same quality as was sold by him would not be sufficient in the absence of a cash memorandum etc. produced before the court.

I find that in the instant case the bill produced is with respect to the purchase by the vendor from the distributor and the only evidence against the petitioners herein is the label which would show the name etc. of the manufacturer. In the absence of any materials to show that the articles were purchased by the distributor from the particular manufacturer, I find that no purpose would be served by further proceeding with the matter against the petitioners herein. Hence, the proceedings pending as S.T.No.497/1999 in the court of the Judicial Magistrate of the First Class, Malappuram, is herewith quashed.

The Crl.M.C is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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O R D E R

4th October, 2007